UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:06 CR 134 CDP DDN
	)	
MICHAEL D. MEADOR, et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION
REGARDING MOTION TO SUPPRESS

This action is before the Court upon the pretrial motions of defendant Michael D. Meador which were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). An evidentiary hearing was held on August 28, 2007. Upon the request of counsel, the court granted the parties a period of time after the filing of the transcript of the hearing to file post-hearing briefs.

Motion to suppress evidence and statements

Defendant Meador has moved to suppress evidence and statements (Docs. 225 and 298). From the evidence adduced at the hearing, and after considering the post-hearing memoranda of the parties, the undersigned makes the following findings of fact and conclusions of law:

FACTS

First interview of Michael Meador on April 27, 2006

1. During April 2006, the Missouri State Highway Patrol investigated the shooting of Sergio Burgos in southeast Missouri. Burgos's body was found on April 22, 2006. Defendant Michael Meador was developed as a suspect in the homicide.

2. At 7:00 a.m. on April 27, 2006, Missouri State Highway Patrol Sgt. Terry Mills was called by Ste. Genevieve County Sheriff Gary Stolzer who told him that Michael Meador, his biological mother Virginia Cates, and his stepfather, Michael Cates, were at the sheriff's office and that Meador wanted to be interviewed. Sheriff Stolzer told Sgt.

Mills that Meador had told him that he was there to discuss a murder he had witnessed. Sgt. Mills asked Sheriff Stolzer to ask Meador if he would wait for Mills to arrive. Sgt. Mills arrived at the sheriff's office at 8:20 a.m. Sheriff Stolzer was with Meador and his parents in the public lobby of the sheriff's office. Meador was not under arrest or restrained.

3. Sgt. Mills took Meador to an interview room[1] to be interviewed by himself, without his parents present.[2] When they entered the interview room, Meador said that he came to the sheriff's office voluntarily and that he just wanted to talk to authorities about the killing. Sgt. Mills[3] told Meador that he was not under arrest. He then advised Meador of his constitutional rights to remain silent and to counsel, because of the seriousness of the matter being investigated. Sgt. Mills then handed Meador a written "Notification and Waiver of Rights" form, Government Exhibit M-1. He read the form to Meador. Meador signed the form after the statements of his rights, thereby expressly stating that he understood his rights. Sgt. Mills filled in the date and the time of day, 8:25 a.m. In the "Waiver of Rights" portion of the form, Meador filled in his age (25), education (13th grade), and unemployed status. Then Meador signed the form and Sgt. Mills signed it as the witness to Meador's signature. By signing the form, Meador expressly affirmed that he read the statement of his rights, that he understood them, that he was willing to make statements and answer questions, that he did not want an attorney at that time, that he understood what he was doing, and that no promise or pressure or force was used against him. Gov. Ex. M-1.

4. During the ensuing interview, Meador said he did not want to identify any other persons involved in the matter, out of fear for his

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[1]The interview room was small and contained a desk and two chairs. At one end of the room was a one-way glass window for observing interviews.

[2]Sgt. Mills told Meador's parents that, because their son was there voluntarily, he wanted to interview him without them present.

[3]Sgt. Mills was dressed in plain clothes. His pistol was visible but kept in its holster.

safety and that of his family. During the early portion of the interview, Sgt. Mills left the interview room to telephone his superior to see whether Meador should be arrested during the interview. Mills could not reach his superior and he decided not to arrest Meador.

5. Before he reentered the interview room, Sgt. Mills, who had never used that interview room before, saw that there was equipment available to record the interview with Meador through the one-way observation window. Mills asked the sheriff's office personnel to record the rest of his interview of Meador, which was done.

6. Sgt. Mills reentered the interview room. The balance of the interview was video-taped[4] through the one-way window. Gov. Ex. M-2. Sgt. Mills never told Meador that the interview was then being recorded. When he resumed the interview, Sgt. Mills did not readvise Meador of his constitutional rights. At no time during the interview did Meador appear to be intoxicated or under the influence of drugs. He did not appear to have a mental defect; he appeared to be competent to the officer.

7. During the interview, Sgt. Mills told Meador that he had exposure to criminal liability. Meador said that Burgos was killed in the course of marijuana trafficking in which Meador was involved. Throughout the interview, Meador sought to negate his role in the killing of Burgos. Instead, he stated that two Haitians were responsible for the killing and that they were going to kill Burgos regardless of what Meador did. Meador said he begged the Haitians not to kill Burgos but he knew the killing was going to happen anyway. Meador vehemently denied having anything to do with killing Burgos and he expressed great fear of retribution against him and his family by the Haitians. Throughout the interview, Meador was very assertive; he made long and loud answers to short questions by Sgt. Mills. Very

[4]The videotape of the interview, Government Exhibit M-2, does not include all of the interview. It recorded only the last hour and 6 minutes of the interview. Approximately 30 minutes of the interview were not recorded. The recorded portion of the interview covered all of the topics covered during the portion of the interview that was not recorded. Sgt. Mills took some notes of the interview. He used the notes to write his report of the interview. His usual policy is to destroy such notes after his report is written.

frequently, Meador interrupted Sgt. Mills's questions and made long narrative statements. Meador's purpose was to persuade the authorities that he should not be charged with killing Burgos. Without being asked, Meador frequently and loudly repeated his statements.

8. The interview ended at approximately 10:00 a.m. Meador left the sheriff's office building without being arrested. The interview lasted about one and one-half hours. During the interview, both Sgt. Mills and Meador left the interview room for a few minutes to take a break. At no time during the interview was Meador placed under arrest. He was not restrained. His cooperation and statements were not induced by any threat, coercion, or promise.

Second interview of Meador on April 27, 2006

9. After the interview in the sheriff's office on April 27, 2006, Meador returned to his residence at 14682 Highway 82 in Ste. Genevieve. Shortly before 6:30 p.m., Sgt. Bauer and Lt. Tim Craig of the Ste. Genevieve County Sheriff's Office went to Meador's residence. At that time Lt. Craig had a copy of a warrant for Meador's arrest; the warrant had been issued at about 4:30 p.m. Craig and Bauer, who were each dressed in polo-type shirts with the sheriff's office logo on them, got out of their unmarked police car and walked onto the driveway in front of the residence. They identified themselves to Meador. Without telling Meador that he had to go with them, they asked him whether he would go with them to the sheriff's office for another interview. Lt. Craig knew of the earlier interview by Sgt. Mills. Craig did not tell Meador about the arrest warrant. Meador immediately agreed to go with them, he did not attempt to flee, and he got into the police car with the officers.

10. As soon as he was seated in the police car and before the car was started, Meador said he then had a gun on his person to protect his family. Both of the officers immediately and repeatedly told Meador not to touch the gun. Meador then in one motion pulled up his shirt and pulled out the firearm. Both of the officers immediately pulled out their weapons. Sgt. Bauer told Meador that it was illegal for him to carry a concealed firearm. The officers then secured Meador's weapon

and put their weapons away. Lt. Craig then again asked Meador whether he would go to the sheriff's office; Meador answered in the affirmative. Without formally placing Meador under arrest, handcuffing him, or restraining him in any way, the officers then drove Meador to the sheriff's office.

11. Missouri State Highway Patrol Sgt. Philip Gregory was at the sheriff's office, when at approximately 6:30 p.m. Sgt. Bauer and Lt. Craig drove in with Meador. Gregory was not in uniform. Meador sat in the small interview room where he was met by Sgt. Gregory. Although he did not tell Meador of the arrest warrant and Meador was not formally arrested or placed in handcuffs, Sgt. Gregory advised him of his constitutional rights to remain silent and to counsel. He gave Meador a written waiver of rights form. Gregory read the form out loud to Meador as Meador read along with him. When they finished reading the rights portion of the form, Government Exhibit M-4,[5] Sgt. Gregory asked Meador whether he understood the rights. Meador said he understood them. Meador then, at 6:32 p.m., signed his name to the form after the printed statements of his rights. Next, Gregory read the waiver of rights portion of the form out loud as Meador read along. Meador again handwrote his age (25), education (13th grade), and the fact that he was unemployed. Meador then read and signed the waiver portion of the form at 6:34 p.m. Gov. Ex. M-4. When he read and signed the form, Meador did not appear intoxicated or incompetent. No promise or threat or coercion was used to get him to cooperate and to waive his rights.

12. Next, Sgt. Gregory asked Meador questions. In response, Meador was loud, talkative, and frequently interrupted the officer and tried to control the direction of the interview. At the beginning of the interview, Meador said there were things he would not talk about. He stated that he was an innocent bystander to the murder, only a middleman in a marijuana deal. He never said he would not answer questions. There were times during the interview when Meador rhetorically said he was through talking about a topic, and then he continued to volunteer statements about the same topic. During the

[5]Government Exhibit M-4 is identical in printed content to Government Exhibit M-1.

interview, several times when Sgt. Gregory attempted to tell Meador about the Missouri felony-murder rule, Meador interrupted him, would not allow the officer to finish his statement, and would not listen, insisting that no jury would convict him of trying to protect his family. During the interview, which was video-recorded without Meador's knowledge, Sgt. Gregory did not use any strong-arm tactics with Meador. No force, no threat, and no promise was made to induce Meador to make statements to the officer.

13. After approximately 35 minutes of the interview, Meador stood up. Sgt. Gregory told Meador to sit down and then told him about the arrest warrant[6] and that he was under arrest. Sgt. Gregory left the interview room for approximately five minutes. After he returned to the room, Sgt. Gregory questioned Meador for about three minutes. Then, Sgt. Gregory produced the arrest warrant, explained it, and read the charges to Meador. The interview continued and Meador loudly and vehemently expressed his innocence of the killing for another five minutes. Then, Sgt. Gregory left the room again, for about five minutes. After he returned to the room, his conversation with Meador continued, with Meador making loud, vehement statements. Meador said that, if Sgt. Gregory continued questioning him without crediting the difficult position Meador had been in at the time of the killing of Burgos, Meador said he would just to go court with his lawyer. Meador said that, if the officer was going to continue "badgering" him, he was done with the interview. He stated he wanted a lawyer and that "I'm done." Sgt. Gregory then left the interview room and the interview ended.

14. Thereafter, at the sheriff's office, when he was booked, jail personnel seized Meador's personal property, which included cash of approximately $1,000 and his billfold.

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[6]The arrest warrant charged Meador with the first-degree murder of Sergio Burgos-Gonzalez, tampering with evidence, and drug trafficking. Gov. Ex. M-3.

April 27, 2006 search warrant search of Meador's residence

15. Later on April 27, 2006, Sgt. Gregory told Lt. Craig to go to the residence of Meador and his parents and to secure it while Gregory went to get a search warrant. The police were concerned that, before the search warrant could be obtained and executed, evidence at the residence could be destroyed. Craig then went to the residence.

16. When he arrived at the residence, Lt. Craig walked to the front door where Mrs. Cates was standing. Craig told her that the police were then applying for a search warrant. He smelled a strong odor of "green" (unburned) marijuana, which he recognized from his experience. The nature of this odor indicated that marijuana was located very close or there was a lot of it. Lt. Craig immediately radioed this information to Sgt. Gregory who was in the process of applying for the search warrant.

17. Lt. Craig stayed at the residence with Mr. and Mrs. Cates until the warrant was brought to the residence and executed. While they were waiting, Mrs. Cates said that she needed to go inside to get her medicine. Lt. Craig asked her whether he could accompany her inside while she got her medicine, explaining that he had to be sure the house stayed secure, and she said yes. They were inside the residence for three or four minutes. They went back outside and Mr. and Mrs. Cates said they were going to stay with relatives. Mrs. Cates's demeanor was "matter-of-fact" and she did not appear concerned about the police investigation.

18. Sgt. Gregory applied to Ste. Genevieve County Circuit Judge Raymond Weber for a search warrant for 14682 Highway 32 in Ste. Genevieve to search for

> firearms, ammunition, casings, bloody clothing, blood stains, marijuana, controlled substances, drug paraphernalia, customer lists, phone records and bills, computers, hard drives, and data stored thereon . . . .

Gov. Ex. M-6 at 4. In support of the application, Sgt. Gregory submitted his written affidavit which he had sworn to and signed before Prosecuting Attorney Carl Krausky, who was a notary public and authorized by Missouri law to administer oaths. The affidavit stated that the body of Sergio Gonzalez Burgos was discovered by Mississippi

County citizens on April 22, 2006. A pathologist stated that Burgos had been shot at least three times. Sgt. Gregory's affidavit described the investigation of the killing, including the statements by Michael Meador on April 27, 2006, and the statements of another witness, both of whom described the circumstances of the killing at 14682 Highway 32 in Ste. Genevieve, Missouri, in connection with the trafficking of a large amount of marijuana. The affidavit also described the April 27, 2006, statements of Meador's mother to law enforcement and an officer's smelling a strong odor of marijuana inside the residence on that day. Id. at 6-7.

19. At 9:55 p.m. Circuit Judge Weber issued the search warrant consistent with the application. Id. at 1. Shortly thereafter, when officers arrived with the search warrant, Lt. Craig and officers entered the residence to execute the warrant. The officers immediately smelled the strong odor of marijuana. The Cates remained outside. Mrs. Cates asked the officers to please lock up the residence when they were finished. The only item seized by the officers in the execution of the warrant was a Super 8 hotel key card for a hotel in Edenburg, Texas; it was seized from the top of the dryer in the laundry room. Id. at 3. The officers knew that the murder victim, Sergio Burgos, was from Edenburg. No marijuana or money was found in the execution of the warrant.

April 28, 2006 warrantless search of Ford Explorer

20. On April 28, 2006, after Meador had been taken into custody, Missouri State Highway Patrol Investigator, Sgt. David Bauer, went to the Cates' residence at 14682 Highway 32 to see whether or not Virginia Cates, Michael Meador's mother, would consent to a search of the Ford Explorer vehicle which was then located away from the residence in a commercial parking lot. He believed the vehicle was owned by her and her husband, Michael Cates. Investigators had information, later confirmed by Mrs. Cates, that Michael Meador had driven the vehicle several times. Sgt. Bauer arrived at the residence at approximately 11:00 a.m. and knocked on the door. Virginia Cates answered the knock. At the door, Sgt. Bauer identified himself and said that he was there

to see whether she would consent to a search of the Ford Explorer. Mrs. Cates confirmed that Michael Meador had driven the Explorer several times. Then, at the front door, Bauer presented a written consent to search form to Mrs. Cates, Government Exhibit M-7. He explained the form to her. He told her she did not have to consent to the search. She handwrote her name in the heading of the form; he wrote his name and identification of the vehicle on it. He wrote in a description of the vehicle as the location to be searched, including the contents of its trunk. He then read the form out loud to her, including the last two sentences above the date and signature lines.[7] Virginia Cates then signed the form at 11:05 a.m., and he signed as the witness to her signature. Gov. Ex. M-7.

21. At that time, Virginia Cates appeared to the officer to be in her late 40s. She was articulate and seemed to understand the form. She did not appear to be intoxicated. No force or promises were made or coercion used to persuade her to consent to the search. Mrs. Cates was not in custody and the explanation and signing of the consent form took less than five minutes. At no time did she object to the form or to the subsequent search, and she never said she did not own the vehicle. Sgt. Mills did not do a records check to determine who the record owner of the vehicle was.[8]

22. Thereafter, Sgt. Mills and Sgt. Bauer searched the Ford Explorer where it was located at a retail auto tire store in Ste. Genevieve. From the vehicle, Sgt. Mills seized fast food receipts (seen in plain view in the passenger compartment), marijuana seeds (seen and seized from under the front passenger seat), marijuana in a closed

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[7]These sentences are: "I understand that I have the right to refuse to consent to the search described above and to refuse to sign this form. I further state that no promises, threats, force, or physical or mental coercion of any kind whatsoever have been used against me to get me to consent to the search described above or to sign this form." Gov. Ex. M-7.

[8]On the date of the search, the 2001 Ford Explorer, after being purchased in used condition in 2005 by Michael Cates, was registered in the records of the State of Missouri to Michael Cates alone. See Def. Meador Ex. B.

envelope (seized from the rear passenger floorboard), a cell phone,[9] the floor mats, and handwritten notes (seized from the interior of the center console). The officers also took swabs of unknown substances seen in the vehicle. See Def. Meador Ex. 1.

Interview of Meador on April 28, 2006

23. During the afternoon of April 28, 2006, Sgt. Don Windham, a Missouri State Highway Patrol homicide investigator, was telephoned by Highway Patrol Sgt. Cooper, who related that New Madrid County Sheriff Terry Stevens called and stated that Meador's mother had telephoned him. He said Mrs. Cates told him that Meador wanted to be interviewed. Sheriff Stevens said he wanted Sgt. Windham to participate in the interview and that the sheriff would audio-tape record the conversation.

24. Sgt. Windham went to the sheriff's office. Meador was brought to the personal office of the sheriff for the interview. Sgt. Windham introduced and identified himself. The sheriff also participated in the ensuing interview. Because Meador had previously asked to speak with his attorney, Sgt. Windham then asked Meador whether he was present of his own free will. Sgt. Windham reminded Meador that he had an attorney and he stated that Meador was initiating the interview. Meador responded that he had told his mother to contact the sheriff for the interview and that he wanted the interview. [10]

25. During the recorded portion of the interview, Meador initiated minutes-long, repeated, narrative statements describing his version of the events that led to the killing of Bergos. Occasionally, Sgt. Windham made very short conversational statements and questions, which Meador used to continue to his narrative of the events and to argue that he was innocent of the killing. During this exchange, Sgt. Windham twice reminded Meador that he had been advised of his rights,

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[9]The cell phone was seized from inside the console compartment between the driver's seat and the front passenger's seat. Before seizing the cell phone, Sgt. Mills had acquired records of the usage of the phone. Before the cell phone was seized, the officer found the marijuana.

[10]This beginning portion of the interview was not audio-recorded.

which Meador loudly interrupted and responded with long narrative statements of his version of the events leading to the killing. When asked why he wanted to speak to the sheriff, Meador made a lengthy statement about wanting to do himself some good. Occasionally, the officers offered a question to Meador which Meador used to further develop the information he wanted the officers to know.

26. Eventually, Sgt. Windham was able to have Meador stop talking long enough for Windham to begin orally advising Meador of his constitutional rights to counsel and to remain silent, using a Notification and Waiver of Rights form, Government Exhibit M-8.[11] As Sgt. Windham began reading the rights to Meador, Meador interrupted him and said, "I have already done this." Nevertheless, Sgt. Windham read each right to Meador and after each right asked Meador whether he understood the right. Each time, Meador answered in the affirmative. Meador signed his name at 2:28 p.m. Next, Sgt. Windham read the Waiver of Rights portion of the form to Meador. To complete that portion, Meador told the officer that he was 25 years of age, had one year of college, and was employed by Robinson Construction. Meador read the paragraph and signed it, expressly attesting to the waiver:

> Having read this statement of my rights and understanding them, I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or force of any kind has been used against me. I am 25 years of age. I attended school through the 1 year college. I am employed by Robinson Const. I understand the English language.

Sheriff Stevens signed as a witness to Meador's signature. Gov. Ex. M-8.

27. Next, Sgt. Windham showed Meador a photograph of a subject whom Meador identified as the Mexican who was present at the killing. Meador continued to volunteer information in long, narrative statements. During this interview, Meador was not intoxicated. He did not exhibit any mental deficiency. He appeared mentally capable of waiving his rights to the officer. No threats or promises were made to induce his

[11]Government Exhibit M-8 is identical in its printed content to Government Exhibits M-1 and M-4.

cooperation or make any statement. Throughout the interview, Meador wanted to talk and to tell his story. He said he would not talk about the Haitians. Throughout the interview, Meador repeatedly stated that, if the Mexican (who had been present at the killing) was found, he would exonerate Meador. He said that the Mexican was a friend of the deceased. He made other statements which were recorded. Gov. Ex. M-9.

28. The recording of the interview is approximately 1.5 hours long. Several minutes of the very beginning of the interview and several minutes of the very end of the interview were not recorded. The recording stopped when the tape ran out. The interview itself ended a short time later.

29. The following Monday, May 1, 2006, in his office, Sgt. Mills opened the previously seized cell phone's memory data and examined the addresses and call log. When he activated the phone, Sgt. Mills was able to confirm the phone belonged to Michael Meador and was owned by Michael Cates. Sgt. Bauer had taken photographs of the Ford Explorer and of the seized items.

June 12 and 20, 2006 interviews of James Lundry

30. On June 12, 2006, James Lundry was an inmate at the New Madrid County Jail where Michael Meador was incarcerated. On that day, Federal Bureau of Investigation Special Agent Herb Stapleton telephoned Missouri State Highway Patrol Sgt. Jeffrey Heath. Agent Stapleton told Sgt. Heath that James Lundry's lawyer, Tom Robison, called him and said that Lundry had information about Michael Meador. Sgt. Heath went to the jail and interviewed Lundry. Lundry told the officer about conversations he had had with Meador in jail. Lundry said that Meador wanted Scott Pepper killed and he gave Heath a paper note, written by Meador, that contained information about Pepper. No law enforcement officer had directed Lundry to speak with Meador. During Sgt. Heath's interview of Lundry, Heath told Lundry that he could speak with Meador again but only about the Pepper matter, and not about the killing of Sergio Burgos. Lundry agreed to do this.

31. On June 20, 2006, Sgt. Heath interviewed James Lundry again in jail; also present were Sheriff Stevens and Deputy Sheriff Hensley.

Lundry told Heath that since the last interview, Meador told Lundry he wanted Lundry to kill a person named Gary Grim as well as Pepper. Lundry agreed to wear a hidden audio recording device for future conversations. Such a device was attached to Lundry on June 20, 2006.

32. In connection with these interviews, Sgt. Heath told both James Lundry and his attorney Tom Robinson that he could make no promise of leniency in exchange for his cooperation. Any leniency would have to come from the prosecuting attorney. Thereafter, Sgt. Heath never sought leniency for Lundry from the state prosecutor. Lundry and Sgt. Heath signed no written agreement regarding cooperation.

June 20 and 21, 2006 recorded conversations of Lundry and Meador

33. Later on June 20, 2006, Lundry audio-recorded two conversations with Meador. Gov. Exs. M-10 and M-11.[12] Meador did not know his conversations with Lundry were audio recorded. During the recorded conversation, Lundry left Meador, made a telephone call, returned to Meador, and they continued to discuss the killing of the two persons. During the recorded conversations, Meador adverted to the Burgos killing and Lundry immediately directed the conversation back to Grim and Pepper. In this audio recording Meador spoke with the same assertive personality, cutting off Lundry and making long oral statements, that he exhibited during the interviews with law enforcement on April 27, 2006. Gov. Ex. M-10. Later on June 20, 2005, Sgt. Heath retrieved the electronic recording device from Lundry's person and turned it off; the conversations recorded by this device were placed on Government Exhibit 10. Because Lundry might be having conversations with Meador later that evening, Heath gave Lundry a recording device that Lundry could control.

[12]The undersigned listened to two and one-half hours of the compact disk recording of the conversations between Lundry and Meador, Gov. Ex. M-10. If there is more conversation recorded on this compact disk that is relevant to defendant Meador's motion to suppress, defendant shall file a supplemental motion to suppress that raises this portion of the CD recording; said motion shall include an accurate transcript of the subject statements.

34. On June 21, 2006, Lundry recorded at least one conversation with Meador in the jail. In this conversation, Lundry made short statements about his supposed conversation with the person who was to do the killing and, as in the interviews with law enforcement, Meador made long, narrative, uninterrupted statements. Later on June 21, Lundry gave the recording, Government Exhibit 11, to Sgt. Heath.

DISCUSSION

Meador moves to suppress evidence seized from the search of the Ford Explorer, and moves to suppress information taken from the cell phone that was found in the Ford Explorer. Meador also moves to suppress the statements he made during the second interview and any statements made to James Lundry. (Docs. 298, 326.) Finally, Meador moves to suppress any other evidence and statements. (Doc. 225.)

A. Seizure of the Firearm

The firearm Meador was carrying on his person, while in the police car on April 22, 2006, should not be suppressed. The officers seized the weapon when Meador pulled the gun out, after the officers instructed him not to. In this case, the officers properly seized the weapon out of concern for their personal safety. See United States v. Bell, 480 F.3d 860, 864 (8th Cir. 2007) (Officers may take steps reasonably necessary to protect their personal safety); United States v. Malachesen, 597 F.2d 1232, 1234 (8th Cir. 1979) (Seizure of handgun was reasonable precaution to assure the officers' personal safety). The firearm should not be suppressed.

B. Seizure of Cash and Billfold

The cash and billfold taken from Meador after his arrest on April 27, 2006, should not be suppressed. These objects were seized at the sheriff's office, when Meador was booked. A suspect may be searched, without a warrant, incident to arrest or as part of the booking process. Illinois v. Lafayette, 462 U.S. 640, 649 (1983); United States v. Robinson, 414 U.S. 218, 236 (1973). The search of Meador's person,

which revealed the cash and billfold, was therefore proper under the Fourth Amendment. These items should not be suppressed.

C. Seizure of the Hotel Card Key

The hotel card seized on April 27, 2006, from the top of the dryer when the officers searched the Cates' residence pursuant to the search warrant should not be suppressed. Under the plain view doctrine, officers may seize an object, without a warrant, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object. Minnesota v. Dickerson, 508 U.S. 366, 374-75 (1993). In this case, the officers had a lawful right to search the home, and by extension the laundry room, by virtue of the search warrant. The hotel key card was for a hotel in Edenburg, Texas, and the officers knew that Sergio Burgos, the murder victim, was from Edenburg. The incriminating character of the hotel key card was therefore immediately apparent. The hotel key card should not be suppressed.

D. Search of the Ford Explorer

Meador argues the April 28, 2006, search of the Ford Explorer vehicle violated the Fourth Amendment's prohibition against unreasonable searches and seizures. In particular, he argues Virginia Cates lacked the authority to consent to a search of the Ford Explorer.

The Fourth Amendment to the Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. The prohibition against unreasonable searches and seizures does not apply where voluntary consent to search has been given - either by the individual whose property is to be searched, or from a third party who possesses common authority over the premises. Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). Common authority does not mean ownership. United States v. McGregor, No. CR-05-43 RMW, 2006 WL 997088, at *4 (N.D. Cal. Apr. 17, 2006). Instead, common authority rests "on mutual use of the property by persons generally having joint access or control for most purposes." Rodriguez, 497 U.S. at 181. The government bears the burden of establishing common authority. Id.

In this case, the government has not established Virginia Cates had the requisite common authority to consent to the search of the Ford Explorer. None of the purchase, title, or registration documents bear Virginia Cates's name. In every case, the documents indicate the Ford Explorer was purchased, titled, and registered in Michael Cates's name. (Doc. 299, Ex. B at 1-16.) From the facts, there is no indication Virginia Cates drove the vehicle, had keys to the vehicle, or had any other form of access or control of the vehicle. Under the circumstances, Virginia Cates lacked common authority to consent to the search. See Rodriguez, 497 U.S. at 181.

This does not, however, mean the search of the Ford Explorer violated the Fourth Amendment. See United States v. Hilliard, 490 F.3d 635, 639 (8th Cir. 2007). Where the third party giving consent lacks the requisite common authority, "the Fourth Amendment is not violated if the police reasonably believed the consent was valid." Id. (citing Rodriguez, 497 U.S. at 188-89). In situations where a search rests on the third party's apparent authority, the critical question is whether a person of reasonable caution would believe the consenting party had authority over the place or item to be searched. Id. In answering the question, the court looks to the facts available to the officer when the consent was given. Id.

In this case, the officers reasonably believed Virginia Cates had the authority to consent to the search of the Ford Explorer. On April 28, 2006, the officers went to the Cates' residence - the same residence listed in the vehicle's registration documents. (See e.g. Doc. 299, Ex. B at 5.) At the time, Sgt. Bauer believed Virginia Cates co-owned the vehicle with her husband and there was no indication she did not. In addition, Virginia Cates confirmed Michael Meador had driven the Explorer. The day before, Virginia and Michael Cates had gone to the police station together, indicating the couple was not separated or estranged. Looking to these facts, the officers reasonably believed Virginia Cates had authority to consent to the search of the Ford Explorer. See United States v. Weston, 443 F.3d 661, 668 (8th Cir. 2006), cert. denied sub nom, Woodard v. United States, 127 S. Ct. 417 (2006) (Officer reasonably believed ex-wife had authority to consent to

search of ex-husband's house, where ex-wife answered the door, and officer knew the couple had been married and had a child together); see also McGregor, 2006 WL 997088, at *5 (Between a married couple, it was objectively reasonable for the officers to believe "the wife . . . would have access to and some degree of control over her husband's truck."). Accordingly, the search of the Ford Explorer did not violate the Fourth Amendment.

E. Seizure of Items from the Ford Explorer

The items seized from the Ford Explorer should not be suppressed. In searching the vehicle, officers seized fast food receipts, marijuana seeds, marijuana, a cell phone, the floor mats, and handwritten notes. Some of these objects were located within containers - in a closed envelope or in the vehicle's console compartment. However, a general consent to search, unless otherwise limited or restricted, authorizes officers to search within a vehicle's closed compartments. Florida v. Jimeno, 500 U.S. 248, 251 (1991).

In this case, the officers presented Virginia Cates with a general consent to search form. She signed the form, authorizing a search of the Ford Explorer, "its contents and the contents of the trunk." Virginia Cates was not forced or coerced into signing the consent form; she did so voluntarily and in a clear state of mind. In addition, she did not place any limits on the officers' search. Under Jimeno, the officers lawfully searched within the vehicle's containers and lawfully seized the items listed above.

F. Search of the Cell Phone Contents

Meador argues the search of the cell phone's contents violated the Fourth Amendment's prohibition against unreasonable searches and seizures. In particular, Meador counters each of the government's theories justifying the warrantless search of the phone's contents. He argues Virginia Cates's consent did not extend to a search of the cell phone's stored information, probable cause did not support a search of the cell phone's memory, and there were no exigent circumstances.

The Fourth Amendment to the Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. Searches conducted outside the judicial process and without a warrant are per se unreasonable under the Fourth Amendment - subject to only a few well-established exceptions. California v. Acevedo, 500 U.S. 565, 580 (1991); United States v. Kennedy, 427 F.3d 1136, 1140 (8th Cir. 2005). In fact, warrantless searches "have been held unlawful notwithstanding facts unquestionably showing probable cause." Katz, 389 U.S. at 357. The government bears the burden of establishing an exception to the warrant requirement. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971); Kennedy, 427 F.3d at 1140.

Reasonable Expectation of Privacy

As a preliminary matter, the government argues Meador does not have a reasonable expectation of privacy in the cell phone's contents. The undersigned disagrees.

Today's cellular phones are not just instruments for placing and receiving phone calls. United States v. Black, No. 04-CR-162-S, 2004 WL 3091175, at *7 (W.D. Wis. Jan. 7, 2004). Modern cell phones have the capacity to store immense amounts of data, including phone numbers, music, photographs, and videos. See id. As a result, cell phones, unlike simple pagers or beepers, store private information that extends well beyond the numbers received. See id.; see also United States v. Park, No. CR 05-375 SL, 2007 WL 1521573, at *8 (N.D. Cal. May 23, 2007) ("[T]he line between cell phones and personal computers has grown increasingly blurry . . . ."). And yet, most courts have found suspects have a reasonable expectation of privacy in the somewhat unsophisticated information stored in pagers. United States v. Hunter, 166 F.3d 1211, No. 96-4259, 1998 WL 887289, at *3 (4th Cir. Oct. 29, 1998) (unpublished); United States v. Stroud, 45 F.3d 438, No. 93-30445, 1994 WL 711908, at *2 (9th Cir. Dec. 21, 1994) (unpublished); United States v. Morales-Ortiz, 376 F. Supp. 2d 1131, 1139 (D.N.M. 2004); United States v. Chan, 830 F. Supp. 531, 534 (N.D. Cal. 1993); United States v. Blas, No. 90-CR-162, 1990 WL 265179, at *21 (E.D. Wis. Dec. 4, 1990);

see also United States v. Reyes, 922 F. Supp. 818, 836 (S.D.N.Y 1996) (suppressing information taken from pager); but see United States v. Meriwether, 917 F.2d 955, 958 (6th Cir. 1990) (The sender of information to an electronic pager had no reasonable expectation of privacy in the information he sent).

In this case, the officers examined the call log and address book of Meador's cell phone. The information in an electronic address book is not information available in pagers, and is not information that would be transmitted to the cellular phone providers. As noted above, today's cell phones are technologically closer to computers than they are to pagers. Accordingly, Meador had a reasonable expectation of privacy in the information stored in his cell phone. See United States v. Finley, 477 F.3d 250, 259 (5th Cir. 2007), cert. denied, 127 S. Ct. 2065 (2007) (Suspect had a reasonable expectation of privacy in the text messages and call records of cell phone); see also Park, 2007 WL 1521573, at *5 n.3, 12 (Granting the motion to suppress evidence obtained from a search of defendant's cell phone, and noting government conceded the defendant had a reasonable expectation of privacy in his phone); Morales-Ortiz, 376 F. Supp. 2d at 1139 ("An individual has an expectation of privacy in an electronic repository for personal data, including cell telephones and pager data memories.").

Scope of Consent

The government argues the search of the cell phone was within the scope of Virginia Cates's consent to search the Ford Explorer.

Before addressing the scope of consent, the government must first prove Virginia Cates had the authority to consent to a search of the phone. See generally Rodriguez, 497 U.S. at 179. The prohibition against unreasonable searches and seizures does not apply where voluntary consent to search has been given - either by the individual whose property is to be searched, or from a third party who possesses common authority over the premises. Rodriguez, 497 U.S. at 181. As noted above, consent to search may be premised on actual authority or apparent authority to search an item. See Hilliard, 490 F.3d at 639. In situations where a search rests on the third party's apparent

authority, the critical question is whether a person of reasonable caution would believe the consenting party had authority over the place or item to be searched. Id. In answering the question, the court looks to the facts available to the officer at the time of the search. Id.

On Friday, April 28, 2006, the officers presented Virginia Cates with a written consent to search form. Gov. Ex. M-7. Acting under her apparent authority, the officers searched the Ford Explorer and found a cell phone in the console. On Monday, May 1, 2006, Sgt. Mills searched the phone. He did this by first activating the phone. When he activated the phone, he was able to confirm the phone belonged to Michael Meador and was owned by Michael Cates. At this point, Sgt. Mills knew the phone did not belong to Virginia Cates and was not registered to her. Nonetheless, he searched the phone's call log and address book. In other words, before he searched the phone, Sgt. Mills knew that Virginia Cates lacked authority to authorize a search of the cell phone's contents. The search of the cell phone's contents cannot be based on consent.

Probable Cause

The government also argues the search of the cell phone was justified by probable cause.

Under the automobile exception, police officers may search a vehicle, without first obtaining a warrant, if they have probable cause to believe the vehicle contains contraband. Chambers v. Maroney, 399 U.S. 42, 48 (1970). The police may also search a closed container within a vehicle, without first obtaining a warrant, if they have probable cause to believe the container contains evidence or contraband. Acevedo, 500 U.S. at 573, 580. The search of the container does not require that the police also have probable cause to search the entire vehicle for contraband. Id. at 573. "[T]he Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle." Id. at 576.

The justification to conduct a warrantless search of a vehicle, or a vehicle's containers, does not vanish simply because the car may be immobile. See Michigan v. Thomas, 458 U.S. 259, 261 (1982) (per

curiam); United States v. Fladten, 230 F.3d 1083, 1086 (8th Cir. 2000) (applying automobile exception to car parked in the driveway). In addition, the closed containers within a vehicle do not need to be searched immediately. United States v. Johns, 469 U.S. 478, 486 (1985) (approving a three-day delay in searching packages removed from a vehicle); 3 Wayne R. LaFave, Search & Seizure § 7.2(d) (4th ed. 2004 & Supp. 2007). Instead, "a container in a vehicle may be searched without a warrant within a reasonable time after its removal from the vehicle." United States v. Oliver, 363 F.3d 1061, 1068 (10th Cir. 2004).

Pagers and other electronic data storage devices may be considered closed containers. See United States v. Ortiz, 84 F.3d 977, 984 (7th Cir. 1996); United States v. Woodley, No. 04-80335, 2005 WL 3132205, at *6 (E.D. Mich. Nov. 22, 2005) ("The pager is a container."); Chan, 830 F. Supp. at 534-35; Blas, 1990 WL 265179, at *21 ("[A]n individual has the same expectation of privacy in a pager, computer or other electronic data storage and retrieval device as in a closed container . . . ."); see also United States v. Vaneenwyk, 206 F. Supp. 2d 423, 425 (W.D.N.Y. 2002) (day planner found in vehicle is analogous to a closed container). This analogy has been extended, albeit never quite explicitly, to cell phones. United States v. Galante, No. 94 Cr. 633 (LMM), 1995 WL 507249, at *3 (S.D.N.Y. Aug. 25, 1995); see also United States v. Mercado-Nava, 486 F. Supp. 2d 1271, 1277 (D. Kan. 2007) ("Traditional search warrant exceptions apply to the search of cell phones.").[13] At the same time, the comparison to closed containers, especially if applied to computers, could present problems. See United States v. Carey, 172 F.3d 1268, 1275 (10th Cir. 1999). "Relying on analogies to closed containers . . . may lead courts to oversimplify a complex area of Fourth Amendment doctrines and ignore the realities of massive modern computer storage." Id.

In this case, Sgt. Mills found Meador's cell phone in the Ford Explorer, which was parked at a retail tire store. Under Thomas and

[13]In its brief, the government points to United States v. Stapleton, 10 F.3d 582, 584 (8th Cir. 1993). In Stapleton, the court rejected the defendant's argument that his cell phone was not a type of container. However, in Stapleton, the officers found drugs contained within the cell phone. Since Stapleton did not involve a search of the data within the phone, it is not on point.

Fladten, the automobile exception applies to the parked Ford Explorer. And looking to Galante, a cell phone found within a vehicle may be analogized to a closed container. Three days after recovering the phone, the sergeant searched its address book and call log. No evidence indicated that any legitimate interest protected by the Fourth Amendment was adversely affected by the three-day delay. Johns, 469 U.S. at 486. Sgt. Mills searched the cell phone within a reasonable time. The remaining and underlying question, therefore, is whether Sgt. Mills had probable cause to believe the cell phone contained evidence or contraband at the time it was seized from the vehicle. See Oliver, 363 F.3d at 1068.

Probable cause exists where the known facts and circumstances are sufficient to warrant a man of reasonable caution in believing that contraband or evidence of a crime will be found in a particular place. Ornelas v. United States, 517 U.S. 690, 696 (1996); Illinois v. Gates, 462 U.S. 213, 238 (1983). Determining whether probable cause exists is a commonsense and practical question, to be judged from the totality of the circumstances. United States v. Donnelly, 475 F.3d 946, 954 (8th Cir. 2007), cert. denied, 127 S. Ct. 2954 (2007). Probable cause does not require evidence sufficient to support a conviction, or evidence showing the likelihood that the suspect committed a crime. Id. "[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." Gates, 462 U.S. at 243 n.13. The principal component of any finding of probable cause will be depend on the events leading up to the search or seizure. Ornelas, 517 U.S. at 696.

When the phone was seized, Michael Meador was a suspect in the death of Sergio Burgos. Meador had also been implicated in marijuana trafficking leading to Burgos's death. In fact, during police questioning, Meador stated he was only acting as a middleman in a marijuana deal at the time of Burgos's death. Before finding the cell phone, the police had obtained a search warrant for Meador's residence. When the officers entered the residence, they smelled a strong odor of marijuana. The next day, the officers obtained consent to search the Ford Explorer. Before seizing the cell phone, the officers found

marijuana and marijuana seeds in the vehicle. The officers had also obtained usage records for the cell phone before seizing it.

Looking to the totality of the circumstances and the events leading to the phone's seizure, the police had connected Meador with the death of Sergio Burgos and the related drug trafficking. An arrest warrant charged Meador with the first-degree murder of Sergio Burgos, tampering with evidence, and drug trafficking. And as part of their investigation, the police had obtained a search warrant for Meador's residence, permission to search Meador's vehicle, and the usage records of Meador's cell phone.

Cellular phones are well-known and recognized tools of the drug dealing trade. United States v. Cleveland, 106 F.3d 1056, 1061 (1st Cir. 1997); United States v. Slater, 971 F.2d 626, 637 (10th Cir. 1992). Confronted with Meador's cell phone and these historical facts, the undersigned believes that a person of reasonable caution would believe that contraband or evidence of a crime would be found in the memory data of Meador's cellular phone. The officers therefore had probable cause to search the cell phone's memory. Acevedo, 500 U.S. at 573, 580.

In his brief, Meador relies on United States v. Park. In Park, police officers arrested the defendants, seized their cell phones, and later searched them. Park, 2007 WL 1521573, at *2-5. In Park, the question was whether the search of the cell phones' contents could be justified as either a search incident to arrest or a booking search. Id. at *5, *10. Unlike Park, the government is not seeking to justify the search of Meador's cell phone as a search incident to arrest or a booking search. Instead, this case concerns searches relating to the automobile exception. Park is therefore distinguishable.

The search of the cell phone's memory did not violate the Fourth Amendment.

G. Statements from the First Interview and April 28 Interview

The statements of Meador during the first interview on April 27, 2006, and the interview on April 28, 2006, should not be suppressed. In each case, the police properly Mirandized him before questioning him. He waived his rights, North Carolina v. Butler, 441 U.S. 369, 372-76 (1979), and the waivers were voluntary, because they were not induced or coerced by improper government action. See United States v. LeBrun, 363 F.3d 715, 724 (8th Cir. 2004) (en banc).

H. Statements from the Second Interview

Meador moves to suppress the statements he made during the second interview on April 27, 2006. He argues he was in custody, and that he invoked his constitutional right to remain silent several times during the interview with police.

The Fifth Amendment to the Constitution protects an individual from being "compelled in any criminal case to be a witness against himself . . . ." U.S. Const. amend. V. To safeguard an individual's Fifth Amendment rights, a suspect in custody must be warned, before being interrogated, that he has the right to remain silent, the right to consult with an attorney, and the right to have an attorney present during the questioning. Davis v. United States, 512 U.S. 452, 457 (1994); Miranda, 384 U.S. at 444. The police must explain these rights to the suspect before questioning him. Davis, 512 U.S. at 457. If the suspect effectively waives his right to counsel after the police explain the Miranda rights, then law enforcement officers are free to question the suspect. Id. Once questioning begins, the suspect may still invoke his right to counsel. See id. And once the suspect requests a lawyer, the police must stop their questioning until an attorney is actually present, or until the suspect reinitiates the conversation. Id.

To invoke the right to counsel and end questioning, the suspect must unambiguously request a lawyer. Id. at 459. "[H]e must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." Id. An ambiguous or equivocal reference to an attorney will not be sufficient to require the

cessation of police questioning. Id. In addition, the officers have no obligation to ask the suspect to clarify an ambiguous statement. Id. at 461-62. "Unless the suspect actually requests an attorney, questioning may continue." Id. at 462 (The statement "Maybe I should talk to a lawyer" was not a request for counsel).

Meador points to several statements he made during the second interview as proof he invoked his right to counsel. In particular, Meador argues "[s]tatements such as 'I don't want to tell you,' 'I'm not going to tell you,' 'this conversation is done,' 'there is no use in talking, let's get it done,' [and] 'let's quit talking about it,' are all unequivocal invocations of [his] right to remain silent." (Doc. 326 at 10.) The undersigned disagrees. Not one of these statements makes any reference to a lawyer, counsel, or an attorney. When heard in context, some of these statements simply deny an allegation. See Simmons v. Bowersox, 235 F.3d 1124, 1131 (8th Cir. 2001) (denying knowledge of something is not the same as invoking the right to remain silent). Other times, the statements were an indication Meador wanted to move on and discuss another topic - though oftentimes he would continue to volunteer statements about the same topic. Whatever their purpose, none of the above statements represents an unequivocal and unambiguous request for counsel.

The need to safeguard a suspect's constitutional rights must be balanced against the need for effective law enforcement. Davis, 512 U.S. at 461. The Supreme Court has struck this balance by requiring a suspect to unambiguously and unequivocally request counsel. Id. at 459. Nothing less will suffice. See id. Under the circumstances, Meador did not unambiguously and unequivocally request a lawyer. See id; see also Dormire v. Wilkinson, 249 F.3d 801, 805 (8th Cir. 2001) ("Could I call my lawyer?" was not an unambiguous request for counsel.) His statements during this interview may be used against him. [14]

[14]Sgt. Gregory advised Meador of his constitutional rights to remain silent and to counsel before questioning began. And as noted above, Meador never invoked his right to counsel during the interview. Taken together, the underlying question of whether Meador was even in custody need not be addressed. See Oregon v. Mathiason, 429 U.S. 492, (continued...)

I. Statements to James Lundry

Meador moves to suppress the statements he made to James Lundry while in prison. He argues using the statements against him would violate his Fifth and Sixth Amendment rights.

The Fifth Amendment to the Constitution protects an individual from being "compelled in any criminal case to be a witness against himself. . . ." U.S. Const. amend. V. To safeguard an individual's Fifth Amendment rights, a suspect in custody must be warned, before being interrogated, that he has the right to remain silent and that any statement he makes may be used against him. Miranda v. Arizona, 384 U.S. 436, 444 (1966). In Miranda, the Supreme Court concluded that the inherently coercive nature of custodial interrogations, with their police dominated atmosphere, blurred the line between voluntary and involuntary statements, heightening the risk that an individual would be deprived of the Fifth Amendment's protections. See Illinois v. Perkins, 496 U.S. 292, 296 (1990). These essential elements of Miranda, namely a police-dominated atmosphere and compulsion, are absent when an incarcerated suspect speaks to someone he believes is a fellow inmate. Id. Simply put "[c]onversations between suspects and undercover agents do not implicate the concerns underlying Miranda." Id. Conversations between suspects do not violate the Self-Incrimination Clause. Id. at 298.

In this case, Meador spoke with James Lundry, a fellow inmate, while the two were incarcerated. Although these conversations were recorded for the benefit of law enforcement, there were never any officers present and there was no inherent element of compulsion or coercion underlying the conversations. Accordingly, Meador's statements to James Lundry do not implicate the Fifth Amendment.

The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. The Sixth Amendment's right to counsel is offense specific. Texas v. Cobb,

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[14](...continued)
494-495 (1977) (per curiam).

532 U.S. 162, 167 (2001). The right to counsel cannot be invoked once and cover all future prosecutions. Id. Likewise, the right does not attach until the initiation of adversary judicial criminal proceedings, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. Id. at 167-68; see also Moran v. Burbine, 475 U.S. 412, 431 (1986) (Looking to the commencement of adversary judicial proceedings is fundamental to the proper application of the Sixth Amendment). As a result, "a defendant's statements regarding offenses for which he [has] not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses." Cobb, 532 U.S. at 168. A contrary holding, the Supreme Court cautioned, "would unnecessarily frustrate the public's interest in the investigation of criminal activities." Id. at 172.

The conversations between Meador and Lundry began on June 12, 2006. By this time, the police had arrested Meador and charged him with the first-degree murder of Sergio Burgos, tampering with evidence, and drug trafficking. Gov. Ex. M-3. Meador's Sixth Amendment right to counsel had attached to these offenses. However, Meador's conversations with Lundry did not concern these offenses. In fact, Lundry intentionally steered the conversations away from any discussion of the Burgos murder or the other charged offenses. In the tape-recorded conversations with Lundry, Meador discussed his desire to see Scott Pepper and Gary Grim killed. At the time of the conversation, no one had initiated any form of adversarial judicial criminal proceedings in connection with Meador's wish to have Pepper and Grim killed. There were no charges or indictments on this matter. Accordingly, Meador's statements to James Lundry do not implicate the Sixth Amendment.

In his brief, Meador argues he was denied his right to counsel because the conversations about Pepper and Grim relate to the charged offenses. However, in Cobb, the Supreme Court expressly disavowed any "factually related" exception for the right to counsel. Cobb, 532 U.S. at 168. As noted above, the Sixth Amendment right to counsel is offense specific. Id. at 167. This "offense-specific definition" does not include any "exception for crimes that are 'factually related' to a charged offense." Id. at 168. Looking to Perkins and Cobb, Meador's

statements to Lundry do not implicate either the Fifth Amendment or the Sixth Amendment. These statements may therefore be used against him.

Whereupon,

IT IS HEREBY RECOMMENDED that the motion of defendant Michael Meador to suppress evidence and statements (Docs. 225 and 298) be denied.

The parties are advised they have twenty days to file written objections to this Report and Recommendation. The failure to file objections may result in a waiver of the right to appeal issues of fact.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on January 7, 2008.